



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 16, 1991

Ms. Iris J. Jones
City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR91-378

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12906.

The city of Austin received a written request for "[a] list of the names of all City of Austin employees who received notification of possible layoff in September 1991." You contend that the requested information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act.

Section 3(a)(11) protects the following:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

As you observe in your letter to this office, section 3(a)(11) is designed to protect advice, opinion, or recommendation on policy matters and to encourage frank and open discussion in the decision-making process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 (1990). This exception does not apply, however, to purely factual material. *See* Open Records Decision Nos. 582, 574 (1990); 419 (1984).

You advise that the requested information represents the recommendations of city department heads and are based on several policy and budgetary assumptions that are subject to change by the city council. The proposed layoffs have yet to be accepted by the city council in the final budget for the next fiscal year. To require

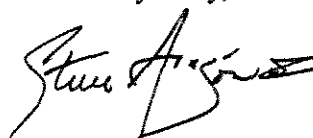
disclosure under these circumstances, you conclude, would inhibit open and frank discussion in the budget-making process.

We must note, however, that the requestor does not seek actual budget recommendations, but the names of individuals affected by a decision already made by city policy makers. The governing body of the city has evidently delegated to department heads the discretion to designate which positions may be considered for possible layoffs. In this sense, the requested information represents "objective data" that would not be protected by section 3(a)(11). *See Austin v. City of San Antonio, supra*, at 394 (agency's written offers in condemnation cases).

You claim the requested information reflects matters contained in the proposed budget prepared by the city manager. We understand that the city manager has released the proposed budget for the next fiscal year to both the city council and the public. In light of this development, we conclude that the requested information is not excepted by section 3(a)(11) and must be released to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-378.

Yours very truly,



Steve Aragon
Assistant Attorney General
Opinion Committee

SA/mc

Ref.: ID#s 12906, 12986, 13001

cc: Ms. Lynn Rubinett
Van Os, Deats, Rubinett & Owen, P.C.
900 Congress Avenue
Austin, Texas 78701